



6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R03-OAR-2018-0371; FRL-9990-37-Region 3]

**Approval and Promulgation of Air Quality Implementation Plans;
District of Columbia; Administrative Corrections and Emissions Statements Certification
for the 2008 Ozone National Ambient Air Quality Standard**

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve two state implementation plan (SIP) revisions submitted by the District of Columbia (the District). Under the Clean Air Act (CAA), states' SIPs must require stationary sources in ozone nonattainment areas classified as marginal or above to report annual emissions of nitrogen oxides (NO_x) and volatile organic compounds (VOC). This emissions statement requirement also applies to stationary sources located in attainment areas within the Ozone Transport Region (OTR) that emit or have the potential to emit at least 50 tons per year (tpy) of VOC or 100 tpy of NO_x. The District formally submitted as a SIP revision, a statement certifying that the District's existing SIP-approved emissions statements program satisfies these CAA requirements for the 2008 ozone National Ambient Air Quality Standards (NAAQS). Upon review of the District's submittal, EPA noted minor discrepancies between the District's SIP-approved provisions, including the provision containing the District's emissions statements requirements, and the current edition of the District of Columbia Municipal Regulations (DCMR) referenced in the District's submittal. Therefore, to correct these minor discrepancies and update the District's

SIP, the District also formally submitted a revised edition of the sections of the DCMR which address the discrepancies. EPA is proposing to approve the District's SIP with the current edition of these SIP-approved provisions. EPA is also proposing to approve the District's emissions statements program certification for the 2008 ozone NAAQS. EPA is proposing to approve these SIP revisions in accordance with the requirements of the CAA.

DATES: Written comments must be received on or before **[insert date 30 days after date of publication in the Federal Register]**.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA-R03-OAR-2018-0371 at <http://www.regulations.gov>, or via email to spielberger.susan@epa.gov. For comments submitted at Regulations.gov, follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from Regulations.gov. For either manner of submission, EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be confidential business information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. EPA will generally not consider comments or comment contents located outside of the primary submission (i.e. on the web, cloud, or other file sharing system). For additional submission methods, please contact the person identified in the "For Further Information Contact" section. For the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit <http://www2.epa.gov/dockets/commenting-epa-dockets>.

FOR FURTHER INFORMATION CONTACT: Sara Calcinore, (215) 814-2043, or by e-mail at calcinore.sara@epa.gov.

SUPPLEMENTARY INFORMATION:

I. Background

Under the CAA, EPA establishes NAAQS for criteria pollutants in order to protect human health and the environment. In response to scientific evidence linking ozone exposure to adverse health effects, EPA promulgated the first ozone NAAQS, the 0.12 part per million (ppm) 1-hour ozone NAAQS, in 1979. *See* 44 FR 8202 (February 8, 1979). The CAA requires EPA to review and reevaluate the NAAQS every 5 years in order to consider updated information regarding the effects of the criteria pollutants on human health and the environment. On July 18, 1997, EPA promulgated a revised ozone NAAQS, referred to as the 1997 ozone NAAQS, of 0.08 ppm averaged over eight hours. 62 FR 38855. This 8-hour ozone NAAQS was determined to be more protective of public health than the previous 1979 1-hour ozone NAAQS. In 2008, EPA strengthened the 8-hour ozone NAAQS from 0.08 to 0.075 ppm. The 0.075 ppm standard is referred to as the 2008 ozone NAAQS. *See* 73 FR 16436 (March 27, 2008).

On May 21, 2012 and June 11, 2012, EPA designated nonattainment areas for the 2008 ozone NAAQS. 77 FR 30088 and 77 FR 34221. Effective July 20, 2012, the Washington, DC-MD-VA area was designated as marginal nonattainment for the 2008 ozone NAAQS. The Washington, DC-MD-VA marginal nonattainment area includes the District of Columbia. *See* 40 CFR 81.309.

Section 182 of the CAA identifies additional plan submissions and requirements for ozone

nonattainment areas. Specifically, section 182(a)(3)(B) of the CAA requires that states develop and submit, as a revision to their SIP, rules which establish annual reporting requirements for certain stationary sources emitting VOCs or NO_x. Sources that are within marginal or above ozone nonattainment areas must annually report the actual emissions of NO_x and VOC to the state. However, states may waive this reporting requirement for classes and categories of stationary sources that emit under 25 tpy of NO_x and VOC if the state provides an inventory of emissions from these classes or categories of sources as required by CAA sections 172 and 182. *See* CAA section 182(a)(3)(B)(ii).

Additionally, the District is included in the OTR established by Congress in section 184 of the CAA. Pursuant to section 184(b)(2), any stationary source located in the OTR that emits or has the potential to emit at least 50 tpy of VOC shall be considered a major stationary source and subject to the requirements which would be applicable to major stationary sources if the area was classified as a moderate nonattainment area. *See* CAA section 184. Thus, stationary sources emitting 50 tpy or more of VOCs in attainment areas in OTR states are subject to plan (or SIP) requirements in CAA section 182(b) applicable to moderate nonattainment areas. Also, section 182(f)(1) of the CAA requires that the plan provisions required for major stationary sources of VOC also apply to major stationary sources of NO_x for states with ozone nonattainment areas. A major stationary source of NO_x is defined as a stationary facility or source of air pollutants which directly emits, or has the potential to emit, 100 tpy or more of NO_x. *See* CAA section 302(j).

In summary, stationary sources in the OTR that emit more than 50 tpy of VOC or 100 tpy of NO_x, notwithstanding the fact that these sources are located within areas designated as attainment for the 2008 ozone NAAQS, are considered major sources and are subject to the same

requirements as major stationary sources located in areas designated as moderate nonattainment areas. These requirements include the emissions statement requirements of CAA section 182(a)(3)(B). *See* CAA section 182(f) and 184(b)(2). Sources located in nonattainment areas classified as marginal or above must also submit an emissions statement as required by CAA section 182(a)(3)(B). As stated previously, states may waive the VOC or NO_x reporting requirement for classes or categories of stationary sources that emit less than 25 tpy of NO_x or 25 tpy of VOC if the state provides an inventory of emissions from such classes or categories of sources as required by CAA sections 172 and 182. *See* CAA section 182(a)(3)(B)(ii). States are required by section 182(a)(3)(B) of the CAA to submit, for approval into the state's SIP, rules requiring the sources described above to provide annual statements showing their actual emissions of NO_x and VOC to the state.

The EPA published guidance on source emissions statements in a July 1992 memorandum titled, "Guidance on the Implementation of an Emission Statement Program" and in a March 14, 2006 memorandum titled, "Emission Statement Requirements Under 8-hour Ozone NAAQS Implementation" (2006 memorandum). In addition, on March 6, 2015, EPA issued a final rule addressing a range of nonattainment area SIP requirements for the 2008 ozone NAAQS, including the emissions statement requirements of CAA section 182(a)(3)(B) (2015 final rule). 80 FR 12264. The 2006 memorandum clarified that the source emissions statement requirement of CAA section 182(a)(3)(B) was applicable to all areas designated nonattainment for the 1997 ozone NAAQS and classified as marginal or above under subpart 2, part D, title I of the CAA. Per the preamble to EPA's 2015 final rule, the source emissions statement requirement also applies to all areas designated nonattainment for the 2008 ozone NAAQS. 80 FR 12264, 12291.

According to the preamble to EPA's 2015 final rule, most areas that are required to have an emissions statement program for the 2008 ozone NAAQS already have one in place due to a nonattainment designation for an earlier ozone NAAQS. 80 FR 12264, 12291. The preamble to EPA's 2015 final rule states that, "If an area has a previously approved emissions statement rule in force for the 1997 ozone NAAQS or the 1-hour ozone NAAQS that covers all portions of the nonattainment area for the 2008 ozone NAAQS, such rule should be sufficient for purposes of the emissions statement requirement for the 2008 ozone NAAQS." *Id.* In cases where an existing emissions statement rule is still adequate to meet the emissions statement requirement under the 2008 ozone NAAQS, states may provide the rationale for that determination to EPA in a written statement for approval in the SIP to meet the requirements of CAA section 182(a)(3)(B). *Id.* In this statement, states should identify how the emissions statement requirements of CAA section 182(a)(3)(B) are met by their existing emissions statement rule. *Id.*

In summary, the District is required to submit, as a formal revision to its SIP, a statement certifying that the District's existing emissions statement program satisfies the requirements of CAA section 182(a)(3)(B) and covers the entirety of the District since it is included as part of the Washington, DC-MD-VA marginal nonattainment area for the 2008 ozone NAAQS.¹

II. Summary of SIP Revision and EPA Analysis

On May 25, 2018, the District, through the District of Columbia Department of Energy and the Environment (DOEE), submitted, as a formal revision to its SIP, a statement certifying that the District's existing emissions statements program covers the District's portion of the Washington, DC-MD-VA nonattainment area for the 2008 ozone NAAQS and is at least as stringent as the

¹ EPA did not require the District or states to certify that its existing SIP-approved emissions statement program continued to satisfy CAA requirements for areas in the OTR to have an emissions statement program.

requirements of CAA section 182(a)(3)(B). Upon review of the District's emissions statements certification, EPA noted minor, stylistic and numbering discrepancies between the District's SIP-approved emissions statements provisions and the emissions statements provisions in the current publication of 20 DCMR § 500 that are cited in the District's emissions statements certification.

EPA first approved the District's emissions statements requirements found at 20 DCMR § 500.7 into the District's SIP on May 26, 1995 (60 FR 27944).² *See also* 40 CFR 52.470. However, in their emissions statements certification for the 2008 ozone NAAQS, the District cites 20 DCMR § 500.9 as containing their emissions statements requirements. According to DOEE, pursuant to the District of Columbia Documents Act of 1978 (D.C. Official Code §2-611 *et seq.*) and Title III of the District of Columbia Administrative Procedures Act (APA) (D.C. Official Code § 2-551 *et seq.*), the Council granted the Administrator of the Office of Documents and Administrative Issuances (ODAI) editorial control of the DCMR to make minor changes in order to conform to their style guide without going through any official legal rulemaking process. Under this authority, it appears that the Administrator of ODAI made numbering and minor stylistic changes to several provisions under 20 DCMR § 500, which resulted in the renumbering of the District's emissions statements provisions from 20 DCMR § 500.7 to 20 DCMR § 500.9. Therefore, on December 12, 2018, the District, through DOEE, submitted a SIP revision requesting that the District's SIP be updated to reflect these minor administrative changes, including the renumbering of the District's SIP-approved emissions statements provisions from 20 DCMR § 500.7 to 20 DCMR § 500.9. This SIP revision requests that EPA update the District's SIP to reflect the current citations to 20 DCMR §§ 500.4 – 500.9, rather than the now

² 20 DCMR §§ 500.4 – 500.5 and 500.6 were also approved into the District's SIP on January 26, 1995 (60 FR 5134) and October 27, 1999 (64 FR 57777), respectively. These provisions concern reporting requirements related to the transfer of gasoline products.

outdated citations to 20 DCMR §§ 500.4 – 500.5, 500.6, and 500.7.³ The SIP revision also requests several minor stylistic changes to these SIP-approved provisions, including, but not limited to, the use of “§” as opposed to “section” and the addition of semicolons.

EPA is proposing to revise the District’s SIP to reflect the current edition of the DCMR for provisions under 20 DCMR §§ 500.4 – 500.9. EPA finds that these revisions meet the requirements of the CAA under section 110(a) and contain only minor administrative changes to regulations that were previously approved into the District’s SIP. In addition, approving this SIP revision ensures that the District’s SIP accurately reflects the correct citations to the District’s current regulations for existing SIP-approved provisions. None of these changes affect emissions of air pollutants, and none of the changes will interfere with any applicable requirements concerning attainment of reasonable further progress or any other applicable requirements in the CAA. Thus, EPA finds that revising the District’s SIP to reflect the current edition of the DCMR for the provisions under 20 DCMR §§ 500.4 – 500.9 is approvable under section 110(l) of the CAA.

As previously mentioned, on May 25, 2018, the District, through DOEE, submitted, as a formal revision to its SIP, a statement certifying that the District’s existing emissions statements program covers the District’s portion of the Washington, DC-MD-VA nonattainment area for the 2008 ozone NAAQS and is at least as stringent as the requirements of CAA section 182(a)(3)(B). In their emissions statements certification, the District cites 20 DCMR § 500.9 as containing their emissions statements requirements.

The provisions under 20 DCMR § 500.9 that implement the District’s emissions statements

³ As stated previously, 20 DCMR §§ 500.4 – 500.5, 500.6, and 500.7 were approved into the District’s SIP on January 26, 1995 (60 FR 5134), October 27, 1999 (64 FR 57777), and May 26, 1995 (60 FR 27944), respectively.

program require the owner of any stationary source that emits 25 tpy or more of NO_x or VOC to submit a statement showing the actual emissions of NO_x and VOC emitted from that source.

These emissions statements are required to be submitted annually for the previous calendar year and, at a minimum, must contain the following: (1) Certification that the information in the statement is accurate to the best knowledge of the individual certifying the statement as well as the certifying individual's name and contact information; (2) source identification information including name, physical location, mailing address of the facility, latitude and longitude, and standard industrial classification code(s); (3) operating information including percentage annual throughput by season, days per week on the normal operating schedule, hours per day during the normal operating schedule, and hours per year during the normal operating schedule; (4) process rate data including annual process rate and peak ozone season daily process rate; (5) control equipment information; and (6) emissions information including, but not limited to, estimated actual emissions of NO_x and VOC in tpy and pounds per typical ozone season day. The District notes in its May 25, 2018 submittal that, pursuant to 40 CFR 51, the District is required to submit emissions inventories for criteria pollutants to EPA's Emissions Inventory System (EIS), and that sources that emit less than 25 tpy of NO_x or VOC are included in these inventories as area sources. The District states that sources that emit less than 25 tpy of NO_x and VOC are therefore addressed in accordance with CAA section 182(a)(3)(B)(ii).

EPA's review of the District's May 25, 2018 submittal finds that the District's emissions statements program under 20 DCMR § 500.9, previously codified at 20 DCMR § 500.7, satisfies the emissions statements requirements of CAA section 182(a)(3)(B) for sources located in marginal or above nonattainment areas for the 2008 ozone NAAQS. Pursuant to CAA section 182(a)(3)(B)(i), the District must require that stationary sources of NO_x or VOC located in

marginal nonattainment areas within the District submit annual emissions statements that are certified by an official of the facility. Since the entire District is designated as marginal nonattainment for the 2008 ozone NAAQS as part of the Washington, DC-MD-VA 2008 ozone NAAQS marginal nonattainment area, this requirement applies to the entirety of the District. EPA finds that 20 DCMR § 500.9 satisfies the requirements of CAA section 182(a)(3)(B)(i) for the 2008 ozone NAAQS because it applies to the entire District and requires that emissions statements are certified and submitted annually.

EPA also finds that the District's emissions thresholds for requiring stationary sources to submit emissions statements satisfy the requirements of CAA section 182(a)(3)(B)(ii). Section 182(a)(3)(B)(ii) allows states to waive emissions statements requirements for any class or category of stationary sources that emit less than 25 tpy of NO_x or VOC if the state provides an inventory of emissions from such class or category of sources using approved emission factors or other methods approved by EPA. As discussed previously, the District's emissions statements requirements under 20 DCMR §500.9 apply to the owner or operator of a stationary source that emits 25 tpy or more of NO_x or VOC. The District also states in its May 25, 2018 submittal that, pursuant to 40 CFR 51, the District includes sources that emit less than 25 tpy of NO_x or VOC as area sources in the emissions inventories that the District submits to EPA's EIS. The District does provide emissions inventories for nonattainment areas as required by CAA section 172(c)(3).⁴ Therefore, EPA finds that 20 DCMR § 500.9, in conjunction with the District's inclusion of sources emitting less than 25 tpy of VOC or NO_x in emissions inventories as area sources, meet the requirements of CAA section 182(a)(3)(B)(ii).

⁴ See, e.g. "Approval and Promulgation of Air Quality Implementation Plans; District of Columbia, Maryland, and Virginia; 2011 Base Year Emissions Inventories for the Washington, DC-MD-VA Nonattainment Area for the 2008 Ozone National Ambient Air Quality Standard," 80 FR 27255 (May 13, 2015).

In addition, EPA notes that since 20 DCMR § 500.9 requires stationary sources located in the entire District that emit 25 tpy or more of NO_x or VOC to submit emissions statements, 20 DCMR § 500.9 also satisfies the requirements of CAA section 182 and 184 related to the District's inclusion in the OTR. As discussed previously, sources located within areas designated attainment/unclassifiable within the OTR that emit more than 50 tpy of VOC or 100 tpy of NO_x are considered major sources and are subject to the same requirements as major stationary sources located in moderate nonattainment areas, including the emissions statements requirements of CAA section 182(a)(3)(B). *See* CAA section 182(f) and 184(b)(2). Because the District is included in the OTR, stationary sources within the District, including sources located in any areas that might in the future be re-designated as attainment areas, that emit or have the potential to emit 50 tpy of VOC or 100 tpy of NO_x, would be required to submit emissions statements. EPA finds that 20 DCMR §§ 500.9 satisfies these requirements of CAA section 182 and 184 as it requires that emissions statements are submitted for stationary sources located in the District that emit 25 tpy or more of NO_x or VOC.

EPA has determined that the provisions under 20 DCMR § 500.9 satisfy the requirements of CAA section 182(a)(3)(B) for the 2008 ozone NAAQS. As previously mentioned, these provisions were previously SIP-approved as 20 DCMR § 500.7. Therefore, EPA is proposing to approve, as a SIP revision, the District's May 25, 2018 emissions statements certification for the 2008 ozone NAAQS as approvable under CAA section 182(a)(3)(B).

III. Proposed Action

EPA is proposing to approve as a SIP revision, the District's December 12, 2018 SIP revision updating the District's SIP to correctly cite the current DCMR numbering of previously-

approved SIP measures. EPA is also proposing to approve as a SIP revision, the District's May 25, 2018 emissions statements certification for the 2008 ozone NAAQS as approvable under CAA section 182(a)(3)(B). EPA is soliciting public comment on the issues discussed in this document. These comments will be considered before taking final action.

IV. Incorporation by Reference

In this document, EPA is proposing to include in a final EPA rule regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, EPA is proposing to incorporate by reference the current edition of the provisions under 20 DCMR §§ 500.4 – 500.9. EPA has made, and will continue to make, these materials generally available through <http://www.regulations.gov> and at the EPA Region III Office (please contact the person identified in the “For Further Information Contact” section of this preamble for more information).

V. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the CAA and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this proposed action:

- Is not a “significant regulatory action” subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);

- Is not an Executive Order 13771 (82 FR 9339, February 2, 2017) regulatory action because SIP approvals are exempted under Executive Order 12866.
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 et seq.);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4);
- Does not have federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this proposed rulemaking action to approve the District's emissions statements

certification for the 2008 ozone NAAQS does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the state, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Authority: 42 U.S.C. 7401 et seq.

Dated: February 21, 2019.

Cecil Rodrigues,
Acting Regional Administrator,
Region III.

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